



# TOWN OF FAIRFAX

142 BOLINAS ROAD, FAIRFAX, CALIFORNIA 94930  
(415) 453-1584 / FAX (415) 453-1618

SEP 28 2020

## NOTICE OF APPEAL

### FOR STAFF USE

Date: 9-28-20 Fee: \$625.00  
Appl.# \_\_\_\_\_  
Receipt# 1-60027  
Recvd. By: M. Gardner  
Action: \_\_\_\_\_

The purpose of the appeal procedure is to provide recourse in case it is alleged that there is an error in any order, requirement, permit, decision or determination by any administrative official, advisory body or commission in the administration or enforcement of the City Ordinances. Any person aggrieved by the action of any administrative official, advisory board or commission in the administration or enforcement of any ordinance in the Town Code may make verified application to the Town Clerk in the manner prescribed by the Town Council within ten (10) days of action that is appealed.

**FEE:** Fees are set by resolution of the Town Council. See fee schedule for current application fees.

### PLEASE PRINT

Appellant's name MORGAN HALL  
Mailing address WALSH LANE Zip: 94930 Day phone \_\_\_\_\_  
Property Address: 6 WALSH LANE

I appeal the decision of: (list board, commission, or department and decision, for example: Planning Commission denial of variance) application # 20-8

The following are my reasons for appeal:

1. DENIED PARTICIPATION IN SEPT. 17 MEETING
2. PLANNING COMMISSION IGNORED DESIGN REVIEW AND HILL AREA RESIDENTIAL REQUIREMENTS
3. PROJECT INVALIDATED BY PROJECT ARCHITECT ERRORS WHICH REQUIRE VARIANCES

hereby declare that I have read the foregoing Notice of Appeal and know the contents thereof. I further declare under penalty of perjury that the information supplied by me is true and correct.

Executed this 28 day of SEPT, 192020

SIGNATURE OF APPELLANT: Morgan Hall

(4/94)

ATTACHMENT A

**THE RESIDENTS  
OF THE EIGHT  
HOUSES CLOSEST  
TO 6 WALSH LANE**

September 28, 2020

Ms. Michele Gardner  
Fairfax Town Clerk  
Town of Fairfax  
142 Bolinas Road  
Fairfax, Calif. 94930

Re: Appeal to Fairfax Town Council of Fairfax Planning Commission  
Decision to Approve  
6 Walsh Lane: Application # 20-8  
Request for Hill Area Residential Development, Design Review,  
Tree Removal, and Excavation permits for a 50 percent  
remodel of an existing 1,510 square foot, 3 bedroom, 2 bathroom,  
single family residence and a 2-story addition to construct a 2,867  
square foot, 5 bedroom, 4 bathroom single family residence with a  
2-car garage.

Dear Members of the Fairfax Town Council,

We, the residents of the eight houses\* closest to 6 Walsh Lane, are appealing the Fairfax Planning Commission decision on September 17, 2020 to approve Application # 20-8 for the remodel of 6 Walsh Lane. We believe the Fairfax Planning Commission failed to perform all of the duties and obligations required of it by the laws of the State of California Government Code Sections 65100 - 65106 Article 1 Local Planning, and the provisions of the Town of Fairfax California Municipal Code of Ordinances Sec. 2.28.020 Powers and Duties.

\*Excavation

\*10, 20, 21 and 24 Walsh Lane. 65, 68, 70, and 76 Manzanita Road.

We are appealing for three reasons:

1. We opposed the Project and were excluded from participating in the last half of the Planning Commission meeting while proponents of the Project were able to participate.
2. The Planning Commission's consideration of the Project focussed on the compliance of quantitative aspects of the Zoning Code (Floor Area Ratio, Height, Footprint) and ignored the qualitative requirements of Design Review and Hill Area Residential Development.
3. Items found in the architectural drawings were incorrect and required variances. No variances were sought. This invalidates the Project's approval.

**REASON #1:** Excluded from full participation in the meeting

The meeting of September 17, 2020 was teleconferenced using ZOOM. After the initial ZOOM discussion, the Commission Chair closed the meeting to the public and the discussion went back to the Commissioners. From that point on, we were unable to make comments and unable to do anything about it.

The meeting was closed to us. However, it remained open to a number of proponents of the Project. This pro-approval participation consisted of:

1. Project architect, Ms. Kehrlein spoke at least 4 times;
2. The Owner's construction manager, Mr. Reuter spoke one time;
3. The Owner's attorney, Mr. Sorenson, spoke once;
4. A letter from the Owner was read aloud, and
5. Two members of our neighborhood were admonished by a Commissioner for not being "more welcoming" to the Owner.

Our inability to participate can't be solely attributed to the shortcomings of ZOOM. We believe that the Planning Commission on September 17, 2020 shouldn't have allowed the exclusion of all but those favoring the Project to participate. It seems to us that a predilection for Project approval existed. This was likely due to the unusual circumstances that existed when the meeting was held.

It was an atypical meeting. There were 4 of 7 Commissioners present, the minimum quorum. Neither Philip Green, the Commission Chair, nor Michelle Rodriguez, the Vice Chair was present. None of the 4 Commissioners present was a design professional.

Until recently, three of these four Commissioners had been on the Planning Commission when Project Architect Kehrlein was also a Commissioner. During that period, Ms. Kehrlein was called upon to clarify or explain some of the architecturally more technical items to other members of the Commission.

Ms. Kehrlein stepped down from the Planning Commission recently. However, she continued to be used by the Commission in that former capacity during the September 17, 2020 meeting. The Chair pro tem sought Ms. Kehrlein's input numerous times. Ms. Kehrlein's contributions were not confined to purely factual clarifications.

Ms. Kehrlein's participation, along with the other pro-Project participation mentioned, was in no way restricted. Because our Project-opposing participation was not possible during that same period, we believe the Planning Commission was influenced inappropriately.

Therefore, this first reason for appealing the Planning Commission's approval of the Project at 6 Walsh Lane, is because of:

1. our exclusion from the last half of the meeting and
2. the Commission favored the pro-approval side of the discussion likely due to the recent close working relationship most of the Commissioners present that evening had with Ms. Kehrlein, Project Architect for 6 Walsh Lane, when she was on the Planning Commission.

**REASON #2:** Planning Commission largely ignored Design Review and Hill Area Residential Development requirements in the Zoning Code in their consideration of the Project

The Planning Commissioners' discussion of the Project focussed almost exclusively on the quantitative elements in the Zoning Code and not the

qualitative elements as well. Restricting themselves to the measurable and objective components of the Project. The Commissioners repeatedly said of the Project that "it meets Code" and "it doesn't need a variance." The implication here is that this alone was sufficient for approval.

Further expressions supporting such a view were:

- The height is 31 feet 10 inches. The height limit is 35 feet, so it meets Code.
- The F.A.R. isn't over .4. It meets Code.
- The parking meets Code.

Other similar, but less finite, comments were:

- It's built within the existing footprint. Though untrue, the implication here is that the Project is small and an efficient use of space (so it should be approved).
- A great deal of money is being spent to restore a run-down old house. The implication being that the neighbors should be grateful, but fail to appreciate the Project (which makes it OK.).

By largely omitting consideration of the more qualitative requirements of Design Review and Hill Area Residential Development in the Zoning Code, the Planning Commission wasn't fully performing the duties required of by the State of California and the Town of Fairfax.

A small caveat here. The Commission voted three to one for the Project. The dissenter commented about Design Review more than once during the meeting, so the Planning Commission can't be accused of completely ignoring the Zoning Code.

The following table illustrates some of the Design Review and Hill Area Residential Development criteria that follow.

(A note on terminology: F.A.R. stands for Floor Area Ratio. It is calculated by dividing the Floor Area of the House by the Area of the Lot. F.A.R. is a widely-used measure that prevents, among other things, very large houses on very small lots.)

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**TABLE #1: COMPARISON OF 6 WALSH PROJECT AND NEIGHBORHOOD**

<u>ITEM</u>	<u>6 Walsh Proposal.</u>	<u>N'HOOD (8 house average)</u>	<u>DIFFERENCE</u>	<u>CODE</u>
Lot size.	7200 SF.	8050 SF.		
Floor Area.	2867 SF*	1350 SF.	212 % substantial.	"harmoniously relate to area"
Height.	31'- 10".	16' - 6".	193 % substantial.	"in proportion to its building site"
F.A.R.**	.4*	.17	235 % substantial.	"appropriate quality and character"
# Bedrms	5	2.4	208 % substantial.	3 bedrooms is the threshold number requiring 2 parking spaces,
# Bathrms	4	1.4	285 % significant	
<u>Exterior</u>				
Siding 1	Cement. Panels.	Wood Stucco.	commercial vs. residential	"present a harmonious appearance"
Color	Dark blue.	Neutrals		
Siding 2	Cement. Smooth. Lap		OK	
Color	Khaki Brown		OK	

<u>ITEM</u>	<u>6 Walsh Proposal.</u>	<u>N'HOOD</u> (8 house average)	<u>DIFFERENCE</u>	<u>CODE</u>
Parking	2 @ 9x19 1 tandem guest at driveway	All have off-street; 3 of 8 have guest space	Inadequate	2 @ 9' x 19', uncovered OK, in front yard OK; 1 guest @ street
Ingress/ Egress.	Garage crowded; tandem guest space in driveway; backing out into narrow lane	Adequate	Inadequate; difficult; unsafe.	Safe for vehicular pedestrian traffic
Grading, features/ grading	233 cu. yds. excavated & removed		Extremely excessive	"minimize grading"

\* claimed but inaccurate (see Misc. Observations)

\*\* Floor Area Ratio = Floor Area of house / Size of lot

## **CHAPTER 17.020 DESIGN REVIEW**

The following part of the Appeal contains the text of the relevant sections of the Zoning Code followed by Comments relating to the Project's conformance or non-conformance with that section.

Note: Text of Design Review Requirements has been abridged in some places for brevity.

### **SECTION 17.020.020 PURPOSE**

(B) The purpose of Design Review is to foster a good design character through consideration of aesthetic and functional relationships to surrounding development and in order to further enhance the town's appearance and the livability and usefulness of properties.

### **SECTION 17.020.030 APPLICABILITY**

The provisions of this chapter shall apply to:

(A) New residences and alterations and additions constituting 50 % remodels.

Comment: The Project is a 50% remodel and therefore subject to the requirements of Design Review.

(B) Only exterior design elements of the appearance shall be considered.

Comment: Exterior design elements to be considered: size, height, siding, color.



(C) The proposed development shall be of a quality and character appropriate to, and serving to protect the value of the immediate area.

Comment: It is assumed that the quality of the Project will be there. The **character** of the Project **differs substantially** from that of the neighborhood.

**Size:** The Project is more that **twice** the neighborhood average. It is 50% larger than the largest existing house.

**Height:** The Project's height is **almost double** the average existing height. It is three feet taller than the tallest existing house.

**Siding:** The cement lap siding on the existing house is compatible. The cement panels on the new part of the Project are of a more **commercial** appearance than the residential character of the siding that exists nearby.

**Color:** The dark blue color of the cement panels is a **departure** from the neutral tones that exist in the neighborhood. The lap siding colored "Khaki Brown" is what should be used throughout if compatibility with the neighborhood is to be achieved.

Achieving compatibility with what exists would serve to protect the value of the immediate area. The discordant appearance of the **Project would most likely compromise the value of the area** due to the consistency of appearance the Walsh Lane neighborhood shares with much of Fairfax.

(D) The proposed development shall conform to **all** the requirements for **landscaping, screening, usable open space** and the design of **parking** and off-street loading areas.

Comment: The Project plans show **conforming landscaping and steep-slope-restricted usable open space**.

**Parking** conforms to the "3 or more bedrooms" requirement of 2 spaces. The single required guest space in the street in front is not possible because Walsh Lane is too narrow. The guest space must now be a tandem spot in the driveway. With 5 bedrooms, the parking will likely be **overloaded**.

The two tight spaces in the garage, the tandem guest space in the driveway and the awkward location of the Bedroom #3 landing will result in a minimally adequate number of parking spaces. A fair amount of maneuvering getting **in and out** of this arrangement will be **difficult**.

(E) Where a proposed development is located in an area with a neighborhood plan, it shall conform with the plan.

Comment: Does not apply. There is no neighborhood plan.

(F) The proposed development shall have sufficient variety to avoid monotony.

Comment: Sufficient variety exists to avoid monotony, perhaps too much when compared to what exists around it.

(G) The **size and design** of the structure is in **proportion** to its site and presents a **harmonious appearance**.

Comment: The size and design of the structure, if isolated from its surroundings, could be deemed proportional to its site. However, in context, it is **much larger** than the structures around it. It is **not proportional** to its immediate setting and does **not present a harmonious appearance**.

(H) The **extent for which the structure conforms to the general character** of other structures in the vicinity insofar as the character can be ascertained and is, found to be architecturally desirable.

Comment: The general character of the structures in the vicinity is diminutive, with one-story gable-roofed houses on downslope lots a little less than 1/4 acre. Given that this character may be found all over Fairfax, it is arguably architecturally desirable.

Looking at Table #1, comparing the 6 Walsh Lane Project and its setting, it is evident that the Project structure **conforms very little** to the general character of the structures in the vicinity.

- It is the **largest house by far** (2867 SF vs. 1350 SF) **on a smaller than average lot** (7200 SF vs. 8050 SF);
- It is **almost twice as tall** (31'-10" vs 16' - 6");
- It is **more than double** in its proportion to the size of its lot (**F.A.R.** .4 vs .17).
- It's "**butterfly**" **roofline is inconsistent** with that found in the vicinity.
- Much of its **exterior material and color differ** (dark blue cement board panels vs. wood or stucco painted in neutral colors).

(I) The extent of ornamentation is to be used and the extent to which temporary and second-hand materials or imitative materials are to be used.

Comment: There is little ornamentation to be used on the Project. There is no use of second-hand materials. The cement siding panels may be said to be imitative of horizontal wood siding. The cement smooth lap siding is a different material but every bit as convincing as wood lap siding.

(J) The extent to which **natural features**, including trees, shrubs, creeks and rocks and the **natural grade** of the site are **to be retained**.

Comment: The proposed landscaping replaces some of the natural features of the site. However, virtually **all** of the existing natural grade of the site adjacent to the structure has been **removed**. The plans show **233 cubic yards of soil and rock being removed**.

This is an unheard of amount of grading for a residential remodel on a 7200 square foot lot. If it were a tear-down or new construction, it might be conceivable.

To haul away that much excavated material would take over 500 pickup truck loads or, more likely, 25 ten-wheeler dump trucks.

The plans also show that some of the grading involves scraping 18 inches of grade away in the area between the front of the house and Walsh Lane. This 18 inches combined with raising the roof 24 inches will result in a finished structure that will appear 42 inches taller.

(K) The **accessibility of off-street parking areas** and the relation of parking areas with respect to traffic on adjacent streets.

Comment: On-street parking does not exist on Walsh Lane because it is only 10-feet-wide. Nearby parking is **limited and minimally adequate** to accommodate the needs of the houses there now. Additional parking demand created by the Project's disproportionate number of bedrooms will negatively affect the delicate balance nearby parking has achieved. Because nearby streets are narrow and parking is limited, irresponsibly-parked cars could be a **safety** issue. Such cars could easily obstruct the 12-foot-wide lane required for emergency vehicles.

(L) The reservation of landscaping areas for the purpose of separating or screening service and storage areas.

Comment: The Project plans show landscaping, but nothing specifically dedicated to screening of service and storage areas.

(M) In the case of a commercial or industrial structure . . .

Comment: Does not apply. The Project's Use is not commercial or industrial.

(N) The Planning Commission and Town Council May adopt design guidelines in order to further the objectives of this section and to illustrate design criteria.

Comment: Does not apply.

## **CHAPTER 17.072 HILL AREA RESIDENTIAL DEVELOPMENT OVERLAY ZONE**

### **SECTION 17.072.010 PURPOSE**

(B) It is the intent of this chapter to accomplish the following:

**(1) Encourage maximum retention of natural topographic features** such as drainage ways, streams, slopes, ridge lines, rock outcropping, vistas, natural plant formation and trees.

Comment: The requirement for the retention of natural topographic features is included in **both** Design Review and Hill Area Residential Development. The Project's disruption of the site's natural features and grade was previously shown to violate Design Review Sec. 17.020.040 (J) requirements. As such, the **Project is also in violation of Hill Area Residential requirements.**

**(2) Minimize grading** of hillside areas;

Comment: As above, this has been covered in Design Review Section 17.020.040 (J). The Project, with 233 cubic yards of excavation, is **also in violation** of this minimal grading requirement of Hill Area Residential Development

(3) Provide a **safe means of ingress and egress** for vehicle and pedestrian traffic to and within hillside areas.

Comment: As mentioned previously in Design Review Sec. 17.020.040 (D) and (K), safe means of ingress and egress for vehicle and pedestrian traffic here will be **negatively impacted** by traffic created by the Project's disproportionate number of bedrooms. Such additional demand is exacerbated by awkward on-site parking and egress requiring backing out into the narrow 10-foot-wide lane.

(4) Minimize water runoff and soil erosion problems during and after construction.

Comment: Water runoff and soil erosion control are usually shown on later Building Permit drawings.

(5) Prevent loss of life, reduce injuries and property damage and minimize economic dislocations from geologic hazards;

Comment: The Project plans contain a geotechnical report and should be engineered to comply with the requirements of that report.

(6) Ensure that infilled development on hillside lots is of a size and scale appropriate to the property and is consistent with other properties in the vicinity under the same zone classification.

Comment: This is a serious concern inherent to the Project. Disregard of the appropriateness of future residential development can give rise to the most dire of consequences. We members of the Walsh Lane

neighborhood believe that this is the very thing that the Project could precipitate if it remains approved.

Planning Commission approval of the Project establishes a frightening precedent. If a project such as 6 Walsh Lane, so discordant with the properties in its vicinity and so contrary to the requirements of Design Review and Hill Area Residential Development, is approved little in the Zoning Code remains enforceable. The Code would have had its teeth removed. Any non-Code-compliant proposal, no matter how appalling, would have little to stop it. What is Fairfax today could easily be gone tomorrow.

## **MISCELLANEOUS OBSERVATIONS:**

**A number of errors and incorrect assumptions have been made in the plans that require variances where none were requested.**

### **1. FRONT/REAR AND SIDE YARD SETBACKS:**

The front and rear setback requirements for a lot in the RS-6 zone, with a slope over 10% per Sec. 17.080.070 are:

Front: 6 foot minimum. Rear: 12 foot minimum

Combined depth: not less than 35 feet

The Project's proposed front and rear setbacks are:

Front: 11 feet. Rear: 18 feet.

Combined: 29 feet

The proposed combined front and rear setbacks of 29 feet do not meet the 35 feet required by Code.

Because of this, the structure at 6 Walsh Lane is Legal Non-Conforming (Sec. 17.016.010).

Per Sec. 17.016.010 (2) such non-conforming structures cannot increase the discrepancy between existing conditions and the standards prescribed in the Code. They are prohibited from being moved, altered or enlarged.

A similar condition exists when considering the side yards at 6 Walsh Lane.

The proposed roof over these areas of non-conformance is being raised two feet. This is an alteration and enlargement of the area of non-conformance (i.e. increase in the discrepancy). Therefore, it is in violation of 17.016.010 (2).

Per 17.016.040 (B) (1) The enlargement shall not affect more than 50% of the floor area of the building; and

Perm17.016.040 (B) (2) Result in the addition of a bedroom.

**Because no provisions were made to correct this problem:**

**The addition of 2 feet to the roof is invalidated;**

**Any bedrooms in addition to the existing 3 are invalidated.**

**2. THE LOWEST LEVEL OF 6 WALSH LANE IS NOT A BASEMENT; THEREFORE ITS CODE-COMPLYING FLOOR AREA IS NOT EXEMPTED FROM BEING INCLUDED IN THE STRUCTURE'S FLOOR AREA**

Under PROJECT DATA on Sheet A1 of the plans, Floor Area calculation may be found in an unlabeled table. The existing floor area of the Lower Floor is shown as 0 SF. This is incorrect.

The existing floor area in the lower level to be counted is approximately 680 SF. Approximately 487 SF of the lower level will be "new".

Re-tabulation of the Lower Level floor area results in a corrected floor area of 1167 SF.

The plans show the Floor Area of the Upper Level as 1916 SF.

Thus, applying the code definition of "basement", the **Total Floor Area** of the proposed Project is 1167 SF + 1916 SF or **3083 SF**.

It is not the claimed 2867 SF.

This correction results with the new F.A.R. = .43 which exceeds the maximum allowed FAR of .4.

**Because the claimed Floor Area of 2867 SF and FAR of .4 were incorrect, the true values being greater than what exists and what is allowed, the Project must be revisited and revised for accuracy.**

**As it stands, the Project should not have been approved.**



## **FURTHER OBSERVATIONS:**

In addition to the two previous Code violations just cited, **a number of design elements of the proposed work at 6 Walsh Lane are either directly offensive to the adjacent properties or potentially harmful to the entire neighborhood.**

### **1. PRIVACY OF 10 WALSH LANE IS COMPROMISED:**

The Proposed Site Plan on Sheet A1 of the plans show the relationship between the new deck off the rear of the Master Bedroom of 6 Walsh and the house next door at 10 Walsh Lane. It is not accurate. The deck is actually farther (relatively speaking) toward the rear of the property than is shown. Accurate positioning reveals a view from the deck into the Master Bath and Master Bedroom of 10 Walsh Lane.

In addition, privacy on 10 Walsh's rear deck will be gone. The new deck is out from behind a view-blocking oak tree, 12 feet higher than and 21 feet closer to the #10 deck.

### **2. LOSS OF LIGHT AT 70 MOUNTAIN VIEW ROAD:**

Raising the roof of 6 Walsh Lane 2 feet is going to deprive 70 Mountain View Road of light from the South. This will especially be felt in the winter months when the sun is low in the sky.

The owner of #70 is a nurse and has an irregular work schedule. She is aware that her garden will lose some light. She is particularly worried about this loss of light and her susceptibility to Shift Work Sleep Disorder. Irregular work and sleep affects circadian sleep rhythms and is often experienced by firefighters, police, doctors, nurses and paramedics. This can lead to insomnia, lack of energy, anxiety and depression.

### 3. POTENTIAL SECOND UNIT:

The layout of 6 Walsh Lane has a peculiarity which lends itself well to creating a second unit. There is a Great Room on one level and a Family Room on the other level. The Family Room on the lower level is an odd space. It is about 14-feet-wide and 30-feet-long with no apparent use for the entire space.

One possible resolution of this unusual space (going from East to West) is: put in a Kitchen, then a Dining Area and then a Living Room. Bedroom #3 could be connected to either level depending upon how much rent is sought. This might also explain why the large, awkward landing for Bedroom #3 remains in the plans even with the parking problems that accompany it.

The creation of this second unit could not be done legally, even with the new Accessory Dwelling Unit rules. The basic problem is that, unlike houses closer to public transportation, 6 Walsh Lane is too far away to waive the parking requirement.

## CONCLUSION

We are fortunate to live in Fairfax with its natural beauty, great weather and quiet neighborhoods. Walsh Lane is a calm and peaceful place. It is a ten-foot-wide gravel cul-de-sac that rests atop a block-long spur ridge. It is particularly quiet here because the hills below block the ambient sounds coming up from Town and Drake Boulevard.

Walsh Lane is a rare spot. Things work well here. Abundant natural gifts and minimal human interference have made it this way.

When we think about how the proposed changes for 6 Walsh Lane will affect things here, it frightens us. Everything about it runs contrary to what is here now. Visually, it's awfully big, casting shadows, obstructing sight lines, looming over everything.

It will be noisy. 5 bedrooms-worth of cars will disrupt formerly-peaceful mornings. The neighborhood will now wake to the dissonant sounds of cars starting their engines and shuffling about in the crowded parking area.

There are so many things about this project that simply won't work. The true driver of this proposal is profit, despite thin protestations by the Owner to the contrary. Efforts to maximize profit have pushed the design beyond reasonableness. It assaults the character of the neighborhood. It offends the people who live there. The quality of life on Walsh Lane will not be improved if this proposal is realized.

Lastly, as mentioned earlier, approval of this Project, so uncharacteristic of its setting and so contrary to the intent of Design Review and Hill Area Residential Development, will establish a dangerous precedent. Approval here legitimizes everything that follows. The Fairfax Zoning Code will have lost its teeth and what is unique to Fairfax will be "gummed" into nothingness.

Time and time again this has happened all over the country. Little is left of what used to be. Blocks of bungalows are now stucco boxes full of apartments. Farmhouses with land are now tracts of "fake-fancy" houses on eighth-acre lots. Main Street's vitality has been sapped away by a new mall a couple of miles away.

Please don't let this happen to Fairfax.

Thank you,  
The residents of 10, 20, 21 and 24 Walsh Lane and 48, 65, 70 and 76  
Manzanita Road.